IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.286 OF 2004

Gopi Khema Rathod Petitioner

Vs.

Commissioner of Police,
Pune City, Pune & anr. Respondents

Mr.P.B.Shah for petitioner.
Ms.A.S.Pai, APP for State.

CORAM: S.S.PARKAR & R.S.MOHITE,JJ.

August 30, 2004

ORAL JUDGMENT (PER S.S.PARKAR,J.)

1. The petitioner has challenged in this petition his detention under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons (Amendment) Act, 1996 (hereinafter referred to as "the MPDA Act").

2. The order of detention was issued by the Commissioner of Police, Pune City on 18/12/2003 pursuant to which the detenu was taken into detention on 20th December 2003. The detention order has been passed on the basis of five CRs. and three in-camera statements. The petitioner is alleged to be a bootlegger and carrying on his activity as

manufacturer of illicit liquor in respect of which crimes were registered against him by the police.

3. In the grounds of detention dated 18/12/2003 it is mentioned that the past criminal record of the petitioner shows that he had committed offences under the provisions of the Prohibition Act such as distilling, manufacturing and selling illicit liquor and has thereby endangered human life and also ruined the poor families. After mentioning the five crimes registered against the petitioner and the three in-camera statements recorded against him, it is stated in para 7 of the grounds of detention that the detaining authority was subjectively satisfied that he was a bootlegger and was indulging in illegal distillation, sale and transport of country made liquor. It is further stated that in order to carry out his illegal activities the petitioner and his accomplice had resorted to showing deadly weapons and beating the persons who dared to object to his activities and thereby he had become perpetual and potential danger to the good health of people and safety and security of the society at large. In paragraph 8 of the grounds of detention it is stated

that the detaining authority was subjectively satisfied that the petitioner was acting in a manner hazardous to the safety and security of the society and consequently prejudicial to the maintenance of public order.

4. On behalf of the petitioner Mr.Shah has raised three contentions. He firstly contended that petitioner is not an educated person and he was not able to read the order and grounds of detention in Marathi properly and that the Marathi documents which were translated from English were not explained to him. The said ground has been taken as ground (i) and. the same is replied to by the detaining authority in reply affidavit dated 12/4/2004. It is stated in paragraph 9 of the reply affidavit that since the detenu is conversant with Marathi language the translation of documents was furnished to him in Marathi language. It is further stated that the detenu was explained the contents of the said documents in the language known to him by the executing authority. Similarly the Sr.P.I. Maruti Dafale attached to Yeravada Police Station, Pune has stated in para 3 of his reply affidavit dated 13th

April 2004 that he had explained the detenu all the documents in Marathi language and thereafter he was served with the documents in the said language in order to enable him to make effective and purposeful representation. He has relied in the said affidavit on the report forwarded by him, in respect of the execution of the order on the detenu, to the Additional Commissioner of Police, Crime, Pune on 20th December 2003. No rejoinder has been filed by the petitioner denying those averments made in the reply affidavits filed on behalf of the respondents. The learned APP had even kept the record available for perusal of the Court which included the report submitted to the Addl. Commissioner of Police, Crime, Pune by the said P.I. to prove that the documents were explained to the detenu in the language known to him.

5. The second contention raised on behalf of the petitioner is that the provisions of the MPDA Act were not applicable to the detenu in the absence of C.A. report to show that what was being manufactured by the detenu was illicit liquor. The said ground has been taken in paragraph 4(v) of the petition. On behalf of

the State the said point has been replied to by the detaining authority in his affidavit dated 12/4/2004. In paragraph 12 of the said affidavit it is stated that there was enough material before the detaining authority to conclude that detenu was bootlegger within the meaning of the MPDA Act though he had not referred to or relied on the CA report in any of the CRs relied by him for issuing the order of detention. He has further stated that CA report was not received by the sponsoring authority and, therefore, no reliance was placed on the CA report nor the copies could be furnished to the detenu. It is further stated that the entire material relied on by the detaining authority for issuing the order of detention was furnished to the detenu along with the translation in the language known to him.

6. Mr.Shah, however, placed reliance on the judgment of the Full Bench of Andhra Pradesh High Court in the case of S.Jayamma v. Collector and District Magistrate, Cuddapah reported in 2004 Cri.L.J. 3153. In that case the CA reports were not received by Detaining Authority and, therefore, it was held that mention of the CA reports as one of the grounds of

detention was irrelevant and extraneous before the receipt of the CA reports by the detaining authority. So far as the instant case is concerned, the detaining authority has not relied nor based its subjective satisfaction on the basis of the CA reports to which no reference is made in the grounds of detention unlike in Andhra Pradesh case. From the grounds of detention as well as the reply affidavit of the detaining authority it is manifest that the detaining authority had relied on other material to arrive at the conclusion that the detenu was a bootlegger within the meaning of the provisions of the MPDA Act.

7. As per the definition of "bootlegger" given in section 2(b) of the Act bootlegger means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provisions of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder or of any other law for the time being in force. The grounds of detention have elaborately mentioned that on the basis of the previous informations raids were conducted at the places where manufacturing activities were being

carried on by the detenu and at the time of the raids, though sometimes, the accused i.e. the detenu escaped from the spot but his associates were caught red-handed while manufacturing the illicit liquor and at the time of the raids all the articles used in preparation and manufacture of illicit liquor were seized under spot panchanamas. In this connection reference may be made to C.R.No.6173 of 2003 which was registered against the detenu under the provisions of the Bombay Prohibition Act. Perusal of the spot panchanama in the said CR indicates that from the place of occurrence articles like stove, barrel used for storing chemicals, 40 litres of boiling chemical, German (thali) cover, wooden ladle, barrel full of raw chemicals were seized. The stoves were used for boiling the chemicals for the purpose of manufacture of illicit liquor. In one of the barrels 40 litres of chemical was found. Wooden ladle was used for the purpose of mixing. Five barrels containing raw chemical used for the purpose of manufacture of liquor were seized. There is also statement of Vijaysingh Suryasingh Patil that 500 litres of raw chemical used for manufacture of illicit liquor was seized. Similarly in C.R.6317 of 2003, registered on

26/2/2003, 30 litres of liquor was seized from the scooter belonging to the detenu. In C.R. No. 6398 of 2003 dated 14/5/2003 in the presence of the detenu the articles like one iron barrel, one cover (thali) made of german, one big german utensil used for heating the liquid and one stove were recovered. Raw chemical of about 200 litres which is used for manufacture of illicit liquor was also seized. It is not disputed on behalf of the petitioner that the aforesaid articles and the chemicals are used for the purpose of manufacture of illicit liquor. In our view that material was enough for the Detaining Authority to form subjective satisfaction that the petitioner was a bootlegger within the meaning of the provisions of the MPDA Act.

8. In this respect reference may be made to the two decisions of this Court to which one of us (Parkar,J.) was a party. Firstly in the case of Gobibai v. State of Maharashtra reported in 2003 ALL MR (Cri) 406, on the basis of the seizure of boiler used for the purpose of distilling liquor and three drums which were smelling of liquor it was held that there was sufficient material from which inference or conclusion

could be drawn by the detaining authority that what was seized from the detenu in that case was prohibited liquor. In that case when the raid was conducted on the basis of the information and liquor and glasses smelling of alcohol were seized under the spot panchanama and the cases were accordingly registered against the detenu under the provisions of the Bombay Prohibition Act, it was held that there was sufficient material from which the detaining authority could have arrived at the subjective satisfaction that the detenu was a bootlegger within the meaning of the Act. In para 18 of the judgment reference was also made to the decision of the Division Bench of this Court (Coram: Shah & Kantharia,JJ.) in the case of Sakharam Patil vs. Commissioner of Police decided on 14th June 1983 in Criminal Writ Petition No.119 of 1983. In that case, cases under the provisions of the Bombay Prohibition Act were registered on the basis of seizure of boiler which is used for distilling liquor and three drums which were smelling of liquor. In that context it was held that the articles seized as per the spot panchanama were sufficient for the detaining authority to form subjective satisfaction. Similar view was taken in the case of Pramod Laxman

Talbhandare vs. Commissioner of Police in Criminal Writ Petition No.1329 of 2003 decided by the Division Bench of this Court on 16/17th March 2004 to which also one of us (Parkar,J.) was a party.

9. So far as this case is concerned, as mentioned earlier number of articles seized under the seizure panchanamas in different cases constituted sufficient material on the basis of which the detaining authority could have arrived at the subjective satisfaction that the detenu was carrying on activities of manufacturing illicit liquor and, therefore, was a bootlegger within the meaning of the provisions of the MPDA Act.

10. The next contention raised on behalf of the petitioner is that there is no material to show that the members of the public at large had been affected after consumption of liquor allegedly manufactured by the petitioner and, therefore, there was no question of the detenu acting prejudically to the maintenance of public order. In order to appreciate the said contention it would be relevant to refer to the provisions of section 2 of the Act. As per section 2(a) (ii) "acting in any manner prejudicial to the

maintenance of public order" in respect of a bootlegger means when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger which affect adversely, or are likely to affect adversely, the maintenance of public order. As per the explanation given in the said section "public order" shall be deemed to have affected adversely or shall be deemed likely to be affected adversely, inter alia, if any of the activities of a bootlegger directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof, or a grave or widespread danger to life or public health. This would mean that in order to affect adversely the maintenance of public order in case of a bootlegger it is not necessary that his activities should be calculated to cause any harm to the public health as such but it is enough if his activities are likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof. In this case the grounds of detention mention that in the event of the detenu remaining at large he was likely to revert to similar activities which were hazardous to the society and

prejudicial to the maintenance of the public order in future and, therefore, it was necessary to detain him. It is also stated that in order to carry out his illegal activities in hutment the detenu and his accomplice had resorted to showing deadly weapons, beating persons who dared to object and thus his activities had become a perpetual and potential danger to the good health of the people and safety and security of the society at large.

11. In this respect mention may be made to C. R. No. 403 of 2001 registered for offences under Sections 143, 147, 332, 336, 337 and 353 of IPC against the detenu and his associates. When pursuant to the information received by the PSI the staff of Yerwada police station carried out raid at the place, the detenu and his associates unlawfully tried to obstruct the way of the police staff. They had gathered in groups consisting of 20 to 25 men and women and started provoking the women folk to abuse the police raiding party. They had even gone to the extent of threatening to pelt stones and cause riots in order to stop raiding police party and, therefore, the crime was registered for the aforesaid offences.

Besides that in-camera statements of three witnesses were recorded. Witness "A" has stated that when he was looking at the illegal activities of the detenu and his associates of loading illicit liquor cans in the ambassador car the detenu went near the witness and abused him in filthy language and threatened him to leave the place and also threatened him of dire consequences if he reported the incident to the police. He was also caught hold of by one of his associates and he was allowed to go only after the ambassador car left with the consignment of illicit liquor. Witness "B" is a shop keeper. The detenu and his associates went near his shop and demanded cigarette packet and pan and when they were told that his shop was closed, the detenu started abusing him and giving threats that his pan shop would be set on fire if cigarettes and pan were not made available to them. When he told them that he would report the matter to the police, he was beaten by the detenu and his associates and his shop was broken open by removing the wooden plank and thereafter cigarette box and cash of Rs.270/- was taken away by them from the cash box. He was threatened for his life if he dared to inform the police about the incident. Similarly

witness "C" was approached by the detenu and his associates on 25th June 2003 at about 11 p.m. when he was about to close his business and go home. The detenu and his associates approached near his handcart and he was asked to serve the Chinese food. After consuming the food when the detenu and his associates took out bottle of liquor and asked for glasses the witness was reluctant to give glasses to them for drinking liquor. The detenu and his associates, therefore, abused him and beat him whipping out knife and pointing it at his stomach. Then cash of Rs.340/- was snatched from the cash box and thereafter the detenu and his associates fled from the scene.

12. The above incidents undoubtedly indicate that the activities of the detenu caused harm, danger and feeling of insecurity among the general public as well as the shop keepers. In our view, on the basis of the aforesaid material the detaining authority was right in forming the subjective satisfaction that the detenu’s activities were dangerous to the maintenance of public order.

13. In the aforesaid circumstances, we find no reason to interfere in the order of detention clamped on the petitioner.

14. In the result the petition is dismissed and rule discharged.

(S.S.PARKAR,J.)

(R.S.MOHITE,J.)